

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

STATE OF TEXAS et al.,

Plaintiffs,

v.

RISING EAGLE CAPITAL GROUP LLC et
al.,

Defendants.

CASE NO. 4:20-cv-02021

PLAINTIFF STATES' MOTION TO STRIKE

Plaintiff States of Arkansas, Indiana, Michigan, Missouri, North Carolina, North Dakota, Ohio, and Texas (collectively "Plaintiff States") respectfully submit to the Court this Motion to Strike Defendants Rising Eagle Capital Group LLC ("Rising Eagle"), Rising Eagle Capital Group Cayman ("Rising Eagle Cayman"), JSquared Telecom LLC's ("JSquared") Answers and Motions to Dismiss. As set forth below, good cause for this request is established.

I. Procedural Background

1. On June 9, 2020, Plaintiff States of Arkansas, Indiana, Michigan, Missouri, North Carolina, Ohio, and Texas filed their Original Complaint against Defendants Rising Eagle, JSquared, John C. Spiller, II ("Spiller"), and Jakob A. Mears ("Mears"),

alleging violations of the TCPA, its related rules, and various state telemarketing laws. ECF No. 1.

2. On August 28, 2020, Plaintiffs filed their First Amended Complaint against Defendants, adding the State of North Dakota as a plaintiff. ECF No. 42.
3. On September 11, 2020, Defendants Rising Eagle and JSquared filed their Answers to the First Amended Complaint. ECF Nos. 45, 49.
4. On October 30, 2020, Plaintiff States filed their Second Amended Complaint against Defendants, adding Defendant Rising Eagle Cayman and other additional defendants. ECF No. 56.
5. On November 20, 2020, Defendants Rising Eagle and JSquared filed their Answers to the Second Amended Complaint. ECF Nos. 64, 66.
6. Defendant Rising Eagle Cayman did not file an Answer to the Second Amended Complaint.
7. On January 7, 2021, Defendant Rising Eagle Cayman filed a Motion to Dismiss the Second Amended Complaint. ECF No. 80.
8. Despite the filing's designation of ECF No. 80, the Motion to Dismiss did not mention Defendant Rising Eagle Cayman.
9. On January 7, 2021, Defendants Rising Eagle and JSquared filed a joint Motion to Dismiss the Second Amended Complaint with Defendants Spiller and Mears. ECF No. 81.

10. The two Motions to Dismiss docketed as ECF Nos. 80 and 81 appear to be identical.
11. Both Motions to Dismiss remain pending.
12. On July 12, 2021, former counsel for Defendants Rising Eagle, Rising Eagle Cayman, and JSquared filed their Motion to Withdraw as Attorney. ECF No. 119.
13. On July 21, 2021, the Plaintiff States filed a response to the Motion to Withdraw. ECF No. 123.
14. On August 13, 2021, the Court held a Motions Hearing. ECF No. 128.
15. On August 17, 2021, the Plaintiff States filed a Proposed Order on Motion to Withdraw. ECF No. 129.
16. On August 18, 2021, the Court ordered “Defendants Rising Eagle, Rising Eagle Cayman, and JSquared shall have new counsel file an appearance with the Court by September 10, 2021. If new counsel has not made an appearance, Defendants Rising Eagle, Rising Eagle Cayman, and JSquared’s Answers and Motions to Dismiss will be stricken.” ECF No. 130.

II. Argument

1. It is well settled that “a corporation can appear in a court of record only by an attorney at law.” *Southwest Exp. Co. Inc. v. I. C. C.*, 670 F.2d 53, 55 (5th Cir. 1982) (quoting *Flora Construction Co. v. Fireman's Fund Ins. Co.*, 307 F.2d 413, 414 (10th Cir. 1962)); see also *Kunstoplast of Am., Inc. v. Formosa Plastics Corp., USA*, 937 S.W.2d 455, 456 (Tex. 1996) (“Generally a corporation may be represented only by a licensed attorney.”).

2. Under Local Rule 83.2, “withdrawal of counsel-in-charge may be effected by motion and order, under conditions imposed by the Court.”
3. The Court imposed a condition of withdrawal that “Defendants Rising Eagle, Rising Eagle Cayman, and JSquared shall have new counsel file an appearance with the Court by September 10, 2021. If new counsel has not made an appearance, Defendants Rising Eagle, Rising Eagle Cayman, and JSquared’s Answers and Motions to Dismiss will be stricken.” ECF No. 130.
4. As of this filing, there have been no appearances by new counsel for Defendants Rising Eagle, Rising Eagle Cayman, and JSquared.
5. Further, Defendants Rising Eagle, Rising Eagle Cayman, and JSquared have not contacted the Plaintiff States regarding new counsel.

III. Prayer

The Plaintiff States respectfully request that the Court strike Defendants Rising Eagle, Rising Eagle Cayman, and JSquared’s Answers and Motions to Dismiss, while still allowing Defendants Spiller and Mears’ Answers and Motions to Dismiss to stand.

DATED: September 13, 2021

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CERTIFICATE OF SERVICE

I hereby certify that, on September 13, 2021, I electronically filed the foregoing **PLAINTIFF STATES' MOTION TO STRIKE** with the Clerk using the CM/ECF system, which will automatically send e-mail notification of such filing to all counsel of record.

/s/ Joseph D. Yeoman
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